



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed August 28, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a hearing was held on October 15, 2015, at Janesville, Wisconsin. A hearing set for September 23, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether this office can backdate an MA application after a prior closure and subsequent denial.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Jennifer Koehn
309 W. Walworth Ave.
Delavan, WI 53115

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Rock County Dept. of Social Services
P.O. Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner received BadgerCare Plus (BC+) MA for her two children (ages 11 and 9) until February 28, 2015; petitioner was ineligible because household income was over 100% of the Federal Poverty Level (FPL). On January 12, 2015 the county agency sent a notice to petitioner's authorized representative that petitioner had to complete a BC+ renewal by February 28, 2015. There was no response to the notice. On February 16, 2015, the agency sent notices to both

- [REDACTED]
- petitioner and her authorized representative that BC+ would end effective March 1, 2015 because the renewal was not completed.
3. On May 19, 2015 a new BC+ application was filed on petitioner's behalf. The agency requested items of verification. When the verification was not received, the agency sent notices on June 30, 2015 to both petitioner and her authorized representative that the application was denied. The notice informed petitioner that if she disagreed with the denial she could appeal, with a deadline for the appeal of August 17, 2015.
 4. Petitioner filed a new MA application on August 4, 2015. MA was opened effective August 1, 2015 after petitioner completed the interview and provided verification. Although petitioner requested a three-month backdate for the children, the backdate was denied because petitioner's monthly income of \$3,195 was too high.
 5. Petitioner filed this appeal on August 28, 2015.

DISCUSSION

Prior to April 1, 2014, the income limit for BC+ was 200% of the FPL. State law changed effective April 1, 2014 following the passage of 2013 Wisconsin Act 20. As of that date the limit for caretaker parents was reduced to 100% of the FPL, which, for a three-person household is \$1,674.17. See Wis. Stat., §49.471(4)(a)4.b for the new law, and the BC+ Handbook, Appendix 50.1 for the limit. The income limit for children is 306% of the FPL, which is \$5,122.95 for a three person household.

In a new application, BC+ can be backdated to three months prior to the month of application for children ages 6 through 18 if household income is below 156% of the FPL in any of the three months. BC+ Handbook, App. 25.8.1. 156% of the FPL for a three-person household is \$2,611.70. Handbook, App. 50.1.

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Wis. Admin. Code, §HA 3.05(3)(a). Language concerning the right to appeal and the time limit is included on all department notices. An MA appeal must be made in writing; it cannot be made orally unless it is then reduced to writing. Wis. Admin. Code, §HA 3.05(2)(a). The date of filing is the date the written appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c). If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

Petitioner filed this appeal seeking BC+ for her children for the period March 1 through July 31, 2015. After reviewing the law and the facts in this case I cannot make a determination that they were eligible during the period.

As noted in the findings of fact, petitioner's children were eligible for BC+ until March 1, 2015. On February 16, 2015, the county sent notices to both petitioner and her authorized representative that coverage was ending March 1. The notice informed petitioner that she could appeal with a deadline of April 16, 2015. Petitioner did not appeal.

A new application was filed May 19, 2015. It was denied June 30 with a notation that petitioner could appeal by August 17, 2015. Petitioner's representative testified that she did not receive that notice because her office moved, but there is no record that she reported the move. Furthermore the notice was sent also to petitioner at petitioner's correct address. There is nothing in the record suggesting that an appeal was filed, or one was requested orally, prior to this appeal filed August 28, 2015.

[REDACTED]

Because petitioner did not appeal the March 1, 2015 discontinuance or the June 30, 2015 denial timely, the Division of Hearings and Appeals does not have jurisdiction to review those actions.

Petitioner filed another new application that was approved for the children as of August 1, 2015. Since petitioner's monthly earned income was \$3,195, it was above the 156% of the FPL threshold of \$2,611 for backdating benefits. Therefore I must conclude that petitioner's children were ineligible for BC+ from March 1 through July 31, 2015, and that there is no mechanism for this office to backdate eligibility.

CONCLUSIONS OF LAW

1. Petitioner's appeal of the March 1, 2015 discontinuance of BC+ for her children and the June 30, 2015 denial of a new BC+ application is untimely.
2. Petitioner's August, 2015 BC+ application cannot be backdated because household income was higher than 156% of the FPL.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING


You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

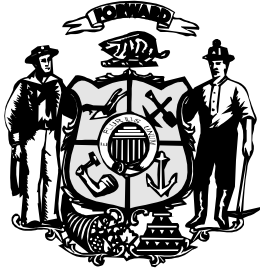
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).


The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 19th day of October, 2015

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 19, 2015.

Rock County Department of Social Services
Division of Health Care Access and Accountability